

TOPIC 3: TERRORISM AND 1ST AMENDMENT RIGHTS

Case

Ctr. for Nat'l Sec. Studies v. U.S. Department of Justice,
331 F.3d 918 (D.C. Cir. 2003).

Summary

Public interest groups sued Department of Justice (DOJ) under Freedom of Information Act (FOIA), seeking information regarding persons detained in wake of major terrorist attack. The United States District Court for the District of Columbia, 215 F.Supp.2d 94, Gladys Kessler, J., denied in part DOJ's summary judgment motion, ruling that DOJ was required to disclose names of detainees and their attorneys, but not other requested information including dates and locations of arrest, detention and release. DOJ appealed, and public interest groups cross-appealed. The Court of Appeals, Sentelle, Circuit Judge, held that: (1) names of detainees and their attorneys were within FOIA's law enforcement exemption; (2) other detention details were also within law enforcement exemption; (3) First Amendment did not require release of information sought; and (4) any common law right of access to information sought was preempted by FOIA. Affirmed in part, reversed in part and remanded. Tatel, Circuit Judge, filed dissenting opinion.

Detroit Free Press v. Ashcroft,
303 F.3d 681 (6th Cir. 2002).

Members of the press and public brought actions against the Attorney General seeking declaration that closure of alien's removal proceeding to the press and public violated their First Amendment right of access, and an injunction against future closure in the proceeding and requiring the government to provide transcripts of previously closed proceedings in the case. The United States District Court for the Eastern District of Michigan, 195 F.Supp.2d 937, Nancy G. Edmunds, J., granted relief, and government appealed. The Court of Appeals, Keith, Circuit Judge, held that: (1) Constitution meaningfully limits non-substantive immigration laws and does not require special deference to the Government; (2) there is a First Amendment right of access to deportation proceedings; and (3) directive requiring closure of "special interest" deportation cases impermissibly infringed on newspapers' First Amendment right of access to deportation proceedings. Affirmed.

United States v. Moussaoui,
No. 03-4162, 2003 WL
21076836 (4th Cir. May 13,
2003).

Capital defendant, who was indicted on charges arising from his alleged participation in plot that culminated in terrorist attacks, was granted access to one of plot's captured leaders. After government appealed and also petitioned for writ of mandamus, members of media moved to intervene for limited purpose of obtaining access to certain portions of the record and oral argument on appeal. The Court of Appeals held that: (1) Classified Information Procedures Act (CIPA) could not, alone, justify sealing of oral arguments and documents; (2) all classified information filed with Court of Appeals would remain under seal; (3) procedure for handling defendant's unclassified, pro se pleadings filed in Court of Appeals would not be altered; (4) classified, ex parte appendices were properly kept under seal; (5) documents in remaining appendices had to be examined to determine whether disclosure was required; (6) sealing of government's certificate of confidentiality and motion to seal oral argument, and motion to seal certificate of confidentiality and motion to seal oral argument, was not justified; and (7) bifurcated oral argument was warranted. Motion granted for limited purpose.

N. Jersey Media Group v. Ashcroft, 308 F.2d 198 (3d Cir. 2002).

Newspaper publishers brought action challenging administrative directive which denied them a right of access to deportation hearings in "special interest" cases involving persons whom the Attorney General had determined might have connections to or knowledge of the September 11, 2001 terrorist attacks. The United States District Court for the District of New Jersey, John W. Bissell, Chief Judge, 205 F.Supp.2d 288, granted publishers' motion for preliminary injunction, and government appealed. The Court of Appeals, Becker, Chief Judge, held that newspapers did not have a First Amendment right of access to deportation proceedings that were determined by the Attorney General to present significant national security concerns. Reversed. Scirica, Circuit Judge, filed dissenting opinion.